

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1809-WQ-E **TCEQ ID:** RN104329735 **CASE NO.:** 34907
RESPONDENT NAME: Best Materials, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Best Materials, 19754 Farm-to-Market Road 39, Iola, Robertson County</p> <p>TYPE OF OPERATION: Sand and gravel mining operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received November 17, 2006, alleging the Respondent was mining on the river's edge and failed to implement measures to control sediment loss. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 31, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. John Bertling, Owner, Best Materials, Inc., 19754 Farm-to-Market Road 39, Iola, Texas 77861 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: November 17, 2006</p> <p>Date of Investigation Relating to this Case: September 20, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 8, 2007 (NOE)</p> <p>Background Facts: This was a record review conducted in response to a complaint.</p> <p>WATER</p> <p>Failed to conduct the required Daily Maximum Effluent Limitation grab sample at a minimum frequency of once a year. Specifically, the Respondent did not obtain a grab sample of storm water discharge from the outfall for the year 2006 [30 TEX. ADMIN. CODE § 281.25(a)(4), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05R720, Part III, Section D(1)(c)].</p>	<p>Total Assessed: \$835</p> <p>Total Deferred: \$167 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$668</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, develop and implement procedures to ensure that the required annual effluent limitation sampling is taken; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): TXR05R720



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES

Assigned

9-Oct-2007

PCW

5-Nov-2007

Screening

5-Nov-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Best Materials, Inc.

Reg. Ent. Ref. No. RN104329735

Facility/Site Region 9-Waco

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34907

Docket No. 2007-1809-WQ-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator J. Craig Fleming

EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

27% Enhancement

Subtotals 2, 3, & 7

\$135

Notes

An enhanced penalty is recommended because the Respondent received one NOV with same/similar violations, one NOV with non-similar violations, and one Agreed Order with denial language.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts \$219

Approx. Cost of Compliance \$200

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$635

OTHER FACTORS AS JUSTICE MAY REQUIRE

32%

Adjustment

\$200

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement recommended for recovery of avoided cost of compliance.

Final Penalty Amount

\$835

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$835

DEFERRAL

20%

Reduction

Adjustment

-\$167

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$668

Screening Date 5-Nov-2007

Docket No. 2007-1809-WQ-E

PCW

Respondent Best Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34907

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104329735

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

An enhanced penalty is recommended because the Respondent received one NOV with same/similar violations, one NOV with non-similar violations, and one Agreed Order with denial language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 5-Nov-2007		Docket No. 2007-1809-WQ-E		PCW
Respondent Best Materials, Inc.		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 34907		<i>PCW Revision September 19, 2007</i>		
Reg. Ent. Reference No. RN104329735				
Media [Statute] Water Quality				
Enf. Coordinator J. Craig Fleming				
Violation Number		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>		
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 281.25(a)(4), and TPDES General Permit No. TXR05R720, Part III, Section D(1)(c)</div>		
Violation Description		<div style="border: 1px solid black; padding: 2px;">Failed to conduct the required Daily Maximum Effluent Limitation grab sample at a minimum frequency of once per year. Specifically, the Responent did not obtain a grab sample of storm water discharge from the outfall for the year 2006.</div>		
Base Penalty				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	x
				Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">5%</div>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
				Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$9,500</div>
				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$500</div>
Violation Events				
Number of Violation Events		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	Number of violation days <div style="border: 1px solid black; padding: 2px; text-align: center;">365</div>	
<i>mark only one with an x</i>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px; text-align: center;">\$500</div>	
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	single event	x		
One single event is recommended.				
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$219</div>	Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px; text-align: center;">\$835</div>	
			This violation Final Assessed Penalty (adjusted for limits) <div style="border: 1px solid black; padding: 2px; text-align: center;">\$835</div>	

Economic Benefit Worksheet

Respondent Best Materials, Inc.
Case ID No. 34907
Reg. Ent. Reference No. RN104329735
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	1-Jan-2006	31-Dec-2006	1.9	\$19	\$200	\$219
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct the annual effluent limitation sampling. The Date Required was the beginning of the sampling period. The Final Date was the end of the sampling period.

Approx. Cost of Compliance \$200

TOTAL \$219

Compliance History

Customer/Respondent/Owner-Operator: CN600507834 Best Materials, Inc. Classification: AVERAGE Rating: 4.80
 Regulated Entity: RN104329735 BEST MATERIALS Classification: AVERAGE Site Rating: 30.00
 ID Number(s): STORMWATER PERMIT TXR05R720
 Location: at 19754 Farm-to-Market Road 39 in lola Rating Date: September 01 07 Repeat Violator: NO
 TCEQ Region: REGION 09 - WACO
 Date Compliance History Prepared: November 01, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 01, 2002 to November 01, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: J. Craig Fleming Phone: (512) 239-5806

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? NA
5. When did the change(s) in ownership occur? NA

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 04/10/2005 ADMINORDER 2004-1074-WQ-E
 Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(a)
 Description: Failure to obtain authorization to discharge storm water associated with an industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System (TPDES).

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/16/2004 (282303)
 2 09/05/2007 (572682)
 3 10/09/2007 (595201)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 09/30/2005 (404481)
 Self Report? NO Clas Major
 Citation: 2B TWC Chapter 11, SubChapter A 11.081
 Description: Failure to obtain a permit for the diversion, using, or making a dedicated release of state water without proper authorization.
 Date: 02/26/2007 (519337)
 Self Report? NO Clas Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT TXR05R720
 Description: Failure to conduct required monitoring or testing.

Self Report?	NO	Clas	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	""	
Rqmt Prov:	PERMIT TXR05R720		
Description:	Failure to conduct required monitoring or testing.		
Self Report?	NO	Clas	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	""	
Rqmt Prov:	PERMIT TXR05R720		
Description:	Failure to conduct annual effluent limitation sampling.		
Self Report?	NO	Clas	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	""	
Rqmt Prov:	PERMIT TXR05R720		
Description:	Failure to conduct the annual comprehensive site evaluation.		
Self Report?	NO	Clas	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	""	
Rqmt Prov:	PERMIT MSGP, Part III, Section A(5)(e)		
Description:	Failure to maintain best management practices (BMPs) in an effective operating condition.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BEST MATERIALS, INC.
RN104329735**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1809-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Best Materials, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a sand and gravel mining operation at 19754 Farm-to-Market Road 39 in Iola, Robertson County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Hundred Thirty-Five Dollars (\$835) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The

Respondent has paid Six Hundred Sixty-Eight Dollars (\$668) of the administrative penalty and One Hundred Sixty-Seven Dollars (\$167) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to conduct the required Daily Maximum Effluent Limitation grab sample at a minimum frequency of once a year, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05R720, Part III, Section D(1)(c), as documented during a record review conducted on September 20, 2007. Specifically, the Respondent did not obtain a grab sample of storm water discharge from the outfall for the year 2006.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Best Materials, Inc., Docket No. 2007-1809-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, develop and implement procedures to ensure that the required annual effluent limitation sampling is taken, in accordance with Permit TXR05R720, Part III, Section D(1)(c); and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

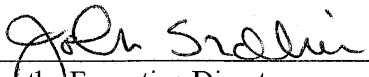
Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

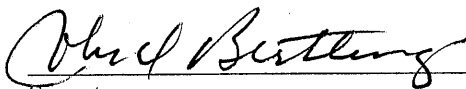
3/11/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

01-02-08
Date

JOHN D. BERTLING
Name (Printed or typed)
Authorized Representative of
Best Materials, Inc.

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

